

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

WINSTON BERNARD BLACK, JR.,

Petitioner,

v.

Case No.: 2:22cv345

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

ORDER

This matter is before the Court on Winston Bernard Black, Jr.'s ("Petitioner") pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, ECF No. 1, and Respondent's motion to dismiss, ECF No. 16. On March 19, 2018, the Circuit Court for the City of Portsmouth, Virginia sentenced Petitioner to seventy years' incarceration after he was convicted of first-degree murder and second-degree murder. ECF 18-1, at 1, 3. In his § 2254 petition, Petitioner alleges that the trial court erred in denying his motions to strike certain testimony and that his trial counsel was constitutionally ineffective.

This petition was referred to a United States Magistrate Judge for a Report and Recommendation ("R&R") pursuant to 28 U.S.C. § 636(b)(1)(B)-(C) and Local Civil Rule 72. On August 17, 2023, the Magistrate Judge assigned to this case issued a detailed R&R recommending that the Court grant Respondent's motion to dismiss

Petitioner's § 2254 petition with prejudice. ECF No. 20, at 12. The R&R advised each party of their right to object to the findings in the R&R and the timeline for doing so. Id. at 12-13. No objections were filed by either party and the time for filing objections has expired.

Having reviewed the relevant portions of the record and found no clear error in the Magistrate Judge's findings or reasoning, the Court **ADOPTS** the R&R.<sup>1</sup> Accordingly, Respondent's motion to dismiss, ECF No. 16, is **GRANTED**, and Petitioner's § 2254 petition, ECF No. 1, is **DISMISSED WITH PREJUDICE**. It is **ORDERED** that judgment be entered in favor of Respondent.

Finding that the procedural basis for dismissal of Petitioner's § 2254 petition is not debatable, a certificate of appealability ("COA") is **DENIED**. 28 U.S.C. § 2253(c); see Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); Miller-El v. Cockrell, 537 U.S. 322, 335-38 (2003); Slack v. McDaniel, 529 U.S. 473, 483-85 (2000).

Petitioner is **ADVISED** that because a COA is denied by this Court, he may seek a COA from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). If Petitioner intends to seek a

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<sup>1</sup> As no objections to the R&R were filed, this Court must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2015) (quoting Fed. R. Civ. P. 72 Advisory Committee's note).

COA from the Fourth Circuit, he must do so **within thirty (30) days** from the date of this Order. Petitioner may seek a COA by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is **REQUESTED** to send a copy of this Order to Petitioner and counsel of record for Respondent.

**IT IS SO ORDERED.**

/s/ 

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Mark S. Davis  
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
October 5, 2023